

AMENDED IN ASSEMBLY APRIL 13, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1868

Introduced by Assembly Member Jones

February 12, 2010

An act to amend Section 10291.5 of, and to add Section 10116.2 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1868, as amended, Jones. Insurance: life: disability: discretionary clauses.

Existing law generally regulates life and disability insurance policies, and requires the Insurance Commissioner to disapprove any disability policy for issuance or delivery in this state in specified circumstances.

This bill would provide that if a policy, contract, certificate, or agreement offered, issued, delivered, or renewed, whether or not in California, that provides or funds life insurance or disability insurance coverage for any California resident contains a provision ~~purporting to reserve~~ *that reserves* discretionary authority to the insurer, or an agent of the insurer, to determine eligibility for benefits or coverage, to interpret the terms of the policy, contract, certificate, or agreement, or to provide standards of interpretation or review that are inconsistent with the laws of this state, that provision would be void and unenforceable.

The bill would also require the commissioner to disapprove any disability policy that contains a provision of this type.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10116.2 is added to the Insurance Code,
2 to read:

3 10116.2. (a) If a policy, contract, certificate, or agreement
4 offered, issued, delivered, or renewed, whether or not in California,
5 that provides or funds life insurance or disability insurance
6 coverage for any California resident contains a provision ~~purporting~~
7 ~~to reserve~~ *that reserves* discretionary authority to the insurer, or
8 an agent of the insurer, to determine eligibility for benefits or
9 coverage, to interpret the terms of the policy, contract, certificate,
10 or agreement, or to provide standards of interpretation or review
11 that are inconsistent with the laws of this state, that provision is
12 void and unenforceable.

13 (b) For purposes of this section, “renewed” means continued in
14 force on or after the policy’s anniversary date.

15 SEC. 2. Section 10291.5 of the Insurance Code is amended to
16 read:

17 10291.5. (a) The purpose of this section is to achieve both of
18 the following:

19 (1) Prevent, in respect to disability insurance, fraud, unfair trade
20 practices, and insurance economically unsound to the insured.

21 (2) Assure that the language of all insurance policies can be
22 readily understood and interpreted.

23 (b) The commissioner shall not approve any disability policy
24 for issuance or delivery in this state in any of the following
25 circumstances:

26 (1) If the commissioner finds that it contains any provision, or
27 has any label, description of its contents, title, heading, backing,
28 or other indication of its provisions that is unintelligible, uncertain,
29 ambiguous, or abstruse, or likely to mislead a person to whom the
30 policy is offered, delivered, or issued.

31 (2) If it contains any provision for payment at a rate, or in an
32 amount, other than the product of rate times the periods for which
33 payments are promised, for loss caused by particular event or
34 events, as distinguished from character of physical injury or illness
35 of the insured, more than triple the lowest rate, or amount, promised

1 in the policy for the same loss caused by any other event or events,
2 loss caused by sickness, loss caused by accident, and different
3 degrees of disability each being considered, for the purpose of this
4 paragraph, a different loss; or if it contains any provision for
5 payment for any confining loss of time at a rate more than six times
6 the least rate payable for any partial loss of time or more than twice
7 the least rate payable for any nonconfining total loss of time; or if
8 it contains any provision for payment for any nonconfining total
9 loss of time at a rate more than three times the least rate payable
10 for any partial loss of time.

11 (3) If it contains any provision for payment for disability caused
12 by particular event or events, as distinguished from character of
13 physical injury or illness of the insured, payable for a term more
14 than twice the least term of payment provided by the policy for
15 the same degree of disability caused by any other event or events;
16 or if it contains any benefit for total nonconfining disability payable
17 for lifetime or for more than 12 months and any benefit for partial
18 disability, unless the benefit for partial disability is payable for at
19 least three months; or if it contains any benefit for total confining
20 disability payable for lifetime or for more than 12 months, unless
21 it also contains benefit for total nonconfining disability caused by
22 the same event or events payable for at least three months, and, if
23 it also contains any benefit for partial disability, unless the benefit
24 for partial disability is payable for at least three months. The
25 provisions of this paragraph shall apply separately to accident
26 benefits and to sickness benefits.

27 (4) If it contains provision or provisions that would have the
28 effect, upon any termination of the policy, of reducing or ending
29 the liability as the insurer would have, but for the termination, for
30 loss of time resulting from accident occurring while the policy is
31 in force or for loss of time commencing while the policy is in force
32 and resulting from sickness contracted while the policy is in force
33 or for other losses resulting from accident occurring or sickness
34 contracted while the policy is in force, and also contains provision
35 or provisions reserving to the insurer the right to cancel or refuse
36 to renew the policy, unless it also contains other provision or
37 provisions the effect of which is that termination of the policy as
38 the result of the exercise by the insurer of that right shall not reduce
39 or end the liability in respect to the hereinafter specified losses as
40 the insurer would have had under the policy, including its other

1 limitations, conditions, reductions, and restrictions, had the policy
2 not been so terminated.

3 The specified losses referred to in the preceding paragraph are:

4 (i) Loss of time which commences while the policy is in force
5 and results from sickness contracted while the policy is in force.

6 (ii) Loss of time that commences within 20 days following and
7 results from accident occurring while the policy is in force.

8 (iii) Losses that result from accident occurring or sickness
9 contracted while the policy is in force and arise out of the care or
10 treatment of illness or injury and that occur within 90 days from
11 the termination of the policy or during a period of continuous
12 compensable loss or losses which period commences prior to the
13 end of the 90 days.

14 (iv) Losses other than those specified in clause (i), (ii), or (iii)
15 of this paragraph that result from accident occurring or sickness
16 contracted while the policy is in force and the losses occur within
17 90 days following the accident or the contraction of the sickness.

18 (5) If by any caption, label, title, or description of contents the
19 policy states, implies, or infers without reasonable qualification
20 that it provides loss of time indemnity for lifetime, or for any period
21 of more than two years, if the loss of time indemnity is made
22 payable only when house confined or only under special
23 contingencies not applicable to other total loss of time indemnity.

24 (6) If it contains any benefit for total confining disability payable
25 only upon condition that the confinement be of an abnormally
26 restricted nature unless the caption of the part containing that
27 benefit is accurately descriptive of the nature of the confinement
28 required and unless, if the policy has a description of contents,
29 label, or title, at least one of them contain reference to the nature
30 of the confinement required.

31 (7) (A) If, irrespective of the premium charged therefor, any
32 benefit of the policy is, or the benefits of the policy as a whole are,
33 not sufficient to be of real economic value to the insured.

34 (B) In determining whether benefits are of real economic value
35 to the insured, the commissioner shall not differentiate between
36 insureds of the same or similar economic or occupational classes
37 and shall give due consideration to all of the following:

38 (i) The right of insurers to exercise sound underwriting judgment
39 in the selection and amounts of risks.

1 (ii) Amount of benefit, length of time of benefit, nature or extent
2 of benefit, or any combination of those factors.

3 (iii) The relative value in purchasing power of the benefit or
4 benefits.

5 (iv) Differences in insurance issued on an industrial or other
6 special basis.

7 (C) To be of real economic value, it shall not be necessary that
8 any benefit or benefits cover the full amount of any loss that might
9 be suffered by reason of the occurrence of any hazard or event
10 insured against.

11 (8) If it substitutes a specified indemnity upon the occurrence
12 of accidental death for any benefit of the policy, other than a
13 specified indemnity for dismemberment, which would accrue prior
14 to the time of that death or if it contains any provision which has
15 the effect, other than at the election of the insured exercisable
16 within not less than 20 days in the case of benefits specifically
17 limited to the loss by removal of one or more fingers or one or
18 more toes or within not less than 90 days in all other cases, of
19 doing any of the following:

20 (A) Of substituting, upon the occurrence of the loss of both
21 hands, both feet, one hand and one foot, the sight of both eyes or
22 the sight of one eye and the loss of one hand or one foot, some
23 specified indemnity for any or all benefits under the policy unless
24 the indemnity so specified is equal to or greater than the total of
25 the benefit or benefits for which the specified indemnity is
26 substituted and which, assuming in all cases that the insured would
27 continue to live, could possibly accrue within four years from the
28 date of such dismemberment under all other provisions of the
29 policy applicable to the particular event or events, as distinguished
30 from character of physical injury or illness, causing the
31 dismemberment.

32 (B) Of substituting, upon the occurrence of any other
33 dismemberment some specified indemnity for any or all benefits
34 under the policy unless the indemnity so specified is equal to or
35 greater than one-fourth of the total of the benefit or benefits for
36 which the specified indemnity is substituted and which, assuming
37 in all cases that the insured would continue to live, could possibly
38 accrue within four years from the date of the dismemberment under
39 all other provisions of the policy applicable to the particular event

1 or events, as distinguished from character of physical injury or
2 illness, causing the dismemberment.

3 (C) Of substituting a specified indemnity upon the occurrence
4 of any dismemberment for any benefit of the policy that would
5 accrue prior to the time of dismemberment.

6 As used in this section, loss of a hand shall be severance at or
7 above the wrist joint, loss of a foot shall be severance at or above
8 the ankle joint, loss of an eye shall be the irrecoverable loss of the
9 entire sight thereof, loss of a finger shall mean at least one entire
10 phalanx thereof and loss of a toe the entire toe.

11 (9) If it contains provision, other than as provided in Section
12 10369.3, reducing any original benefit more than 50 percent on
13 account of age of the insured.

14 (10) If the insuring clause or clauses contain no reference to the
15 exceptions, limitations, and reductions, if any, or no specific
16 reference to, or brief statement of, each abnormally restrictive
17 exception, limitation, or reduction.

18 (11) If it contains benefit or benefits for loss or losses from
19 specified diseases only unless:

20 (A) All of the diseases so specified in each provision granting
21 the benefits fall within some general classification based upon the
22 following:

23 (i) The part or system of the human body principally subject to
24 all of those diseases.

25 (ii) The similarity in nature or cause of those diseases.

26 (iii) In case of diseases of an unusually serious nature and
27 protracted course of treatment, the common characteristics of all
28 of those diseases with respect to severity of affliction and cost of
29 treatment.

30 (B) The policy is entitled and each provision granting the
31 benefits is separately captioned in clearly understandable words
32 so as to accurately describe the classification of diseases covered
33 and expressly point out, when that is the case, that not all diseases
34 of the classification are covered.

35 (12) If it does not contain provision for a grace period of at least
36 the number of days specified below for the payment of each
37 premium falling due after the first premium, during which grace
38 period the policy shall continue in force provided, that the grace
39 period to be included in the policy shall be not less than seven days
40 for policies providing for weekly payment of premium, not less

1 than 10 days for policies providing for monthly payment of
2 premium and not less than 31 days for all other policies.

3 (13) If it includes a provision ~~purporting to reserve~~ *that reserves*
4 discretionary authority to the insurer, or an agent of the insurer,
5 to determine eligibility for benefits or coverage, to interpret the
6 terms of the policy, or to provide standards of interpretation or
7 review that are inconsistent with the laws of this state.

8 (14) If it fails to conform in any respect with any law of this
9 state.

10 (c) The commissioner shall not approve any disability policy
11 covering hospital, medical, or surgical expenses unless the
12 commissioner finds that the application conforms to both of the
13 following requirements:

14 (1) All applications for disability insurance covering hospital,
15 medical, or surgical expenses, except that which is guaranteed
16 issue, which include questions relating to medical conditions, shall
17 contain clear and unambiguous questions designed to ascertain the
18 health condition or history of the applicant.

19 (2) The application questions designed to ascertain the health
20 condition or history of the applicant shall be based on medical
21 information that is reasonable and necessary for medical
22 underwriting purposes. The application shall include a prominently
23 displayed notice that states:

24
25 “California law prohibits an HIV test from being required or
26 used by health insurance companies as a condition of obtaining
27 health insurance coverage.”
28

29 (d) Nothing in this section authorizes the commissioner to
30 establish or require a single or standard application form for
31 application questions.

32 (e) The commissioner may, from time to time as conditions
33 warrant, after notice and hearing, adopt reasonable rules and
34 regulations, and amendments and additions thereto, as are necessary
35 or convenient, to establish, in advance of the submission of
36 policies, the standard or standards conforming to subdivision (b),
37 by which he or she shall disapprove or withdraw approval of any
38 disability policy.

39 In adopting those rules and regulations the commissioner shall
40 give consideration to the criteria herein established and to the

1 desirability of approving for use in policies in this state uniform
2 provisions, nationwide or otherwise, and is hereby granted the
3 authority to consult with insurance authorities of any other state
4 and their representatives individually or by way of convention or
5 committee, to seek agreement upon those provisions.

6 Any such rule or regulation shall be adopted in accordance with
7 the procedure provided in Chapter 3.5 (commencing with Section
8 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

9 (f) The commissioner may withdraw approval of filing of any
10 policy or other document or matter required to be approved by the
11 commissioner, or filed with him or her, by this chapter when the
12 commissioner would be authorized to disapprove or refuse filing
13 of the same if originally submitted at the time of the action of
14 withdrawal.

15 The withdrawal shall be in writing and shall specify the reasons.
16 An insurer adversely affected by any such withdrawal may, within
17 a period of 30 days following mailing or delivery of the writing
18 containing the withdrawal, by written request secure a hearing to
19 determine whether the withdrawal should be annulled, modified,
20 or confirmed. Unless, at any time, it is mutually agreed to the
21 contrary, a hearing shall be granted and commenced within 30
22 days following filing of the request and shall proceed with
23 reasonable dispatch to determination. Unless the commissioner in
24 writing in the withdrawal, or subsequent thereto, grants an
25 extension, the withdrawal shall, in the absence of a request, be
26 effective, prospectively and not retroactively, on the 91st day
27 following the mailing or delivery of the withdrawal, and, if request
28 for the hearing is filed, on the 91st day following mailing or
29 delivery of written notice of the commissioner's determination.

30 (g) No proceeding under this section is subject to Chapter 5
31 (commencing with Section 11500) of Part 1 of Division 3 of Title
32 2 of the Government Code.

33 (h) Except as provided in subdivision (k), any action taken by
34 the commissioner under this section is subject to review by the
35 courts of this state and proceedings on review shall be in
36 accordance with the Code of Civil Procedure.

37 Notwithstanding any other provision of law to the contrary,
38 petition for a review may be filed at any time before the effective
39 date of the action taken by the commissioner. No action of the
40 commissioner shall become effective before the expiration of 20

1 days after written notice and a copy thereof are mailed or delivered
2 to the person adversely affected, and any action so submitted for
3 review shall not become effective for a further period of 15 days
4 after the filing of the petition in court. The court may stay the
5 effectiveness thereof for a longer period.

6 (i) This section shall be liberally construed to effectuate the
7 purpose and intentions herein stated; but shall not be construed to
8 grant the commissioner power to fix or regulate rates for disability
9 insurance or prescribe a standard form of disability policy, except
10 that the commissioner shall prescribe a standard supplementary
11 disclosure form for presentation with all disability insurance
12 policies, pursuant to Section 10603.

13 (j) This section shall be effective on and after July 1, 1950, as
14 to all policies thereafter submitted and on and after January 1,
15 1951, the commissioner may withdraw approval pursuant to
16 subdivision (d) of any policy thereafter issued or delivered in this
17 state irrespective of when its form may have been submitted or
18 approved, and prior to those dates the provisions of law in effect
19 on January 1, 1949, shall apply to those policies.

20 (k) Any policy issued by an insurer to an insured on a form
21 approved by the commissioner, and in accordance with the
22 conditions, if any, contained in the approval, at a time when that
23 approval is outstanding shall, as between the insurer and the
24 insured, or any person claiming under the policy, be conclusively
25 presumed to comply with, and conform to, this section.